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Last year, the Department of Interior (DOI) assembled a committee, under the Federal Advisory Committee Act (FACA), to develop recommendations on how to improve the practice and process of natural resource damage assessment (NRDA). Chevron commends the DOI and its staff, and the FACA committee members, who have invested a considerable amount of “sweat equity” during their deliberative and thoughtful work. Chevron also thanks the DOI for the opportunity to review and comment on the draft reports prepared by the four FACA sub-committees.

Chevron’s comments below are focused only on its general thoughts about the sub-committees draft recommendations. The comments below are offered in a spirit of partnership to find constructive improvements to a process that at times is more cumbersome and contentious than is necessary. Finally, the comments below are offered on behalf of Chevron Environmental Management Company.

General Comments

1. Overall, Chevron believes that the sub-committees have provided some thoughtful proposals and suggestions that, if properly implemented, would appreciably improve the practice of NRDA. It was especially noteworthy that all four sub-committees embraced a common goal: achieving restoration of natural resources promptly and efficiently. Most of the draft recommendations are related to that goal. Chevron encourages the DOI to carefully select and implement the optimal combination of recommendations to achieve the goal of prompt and efficient restoration of natural resources.

2. When the FACA is completed, and the next phase of work begins, Chevron respectfully requests the DOI to include the key stakeholders in the steps leading up to implementation of the FACA committee's recommendations. Whether the next steps include preparation of guidance documents or changes in 43 CFR 11, Chevron encourages the DOI to include key stakeholders as partners in the process.
3. Chevron encourages the DOI to consider implementing the FACA Committee's recommendations in the form of guidance to the practicable extent possible.

Comments on Draft Recommendations

Sub-Committee 1

1. Chevron generally supports the Recommendations of Sub-committee 1. We especially support the idea that site-specific conditions should govern the scope of the assessment and that NRDA practioners should have the flexibility to choose the appropriate level of biological organization (or habitat-based) at which the assessment is conducted.
2. Perhaps Sub-committee 1 can revisit its discussion of the use of ecological risk assessment methods/approaches (Section 2.3) to determine if other aspects of ecological risk assessment can be incorporated into the NRDA process. Sub-committee 1 seems to have limited its consideration of potential ecological risk assessment approaches to the issue of uncertainty. Beyond management of uncertainty, which other applications could be applied? For example, would it be feasible to apply hazard quotients as proxies for service loss? If so, under what conditions? Should guidance be developed to get specific applications of ERA into the tool kit of NRDA practioners?
3. On line 887 (Recommendation No. 2), Chevron suggests that the word "mandating" be deleted and the word "determining" inserted. The meaning of this sentence is a bit vague, but "mandating" seems to undermine the concept of flexibility or regulations that are "suggestive".
4. Recommendation No. 4- Although Chevron agrees that NRDA practioners should have the flexibility to determine the appropriate level of assessment on a site-specific basis, Chevron believes that Recommendation 4 doesn't go far enough. Habitat, as Sub-committee 1 points out, is the address or place where an organism lives. But habitats also provide a foundation for other level of biological organization (e.g., populations, communities, ecosystems). Therefore, Chevron believes that guidance should be issued to support a habitat-based approach to assessments as the *preliminary consideration* in the NRDA process (with the possible exception of injuries involving protected species)- the "You build it, they will come" approach.
5. Chevron strongly supports the additional comments at the end of Recommendation 4.

Sub-Committee 2

1. Chevron supports the concept of “expedited” settlements.
2. Chevron supports the idea of DOI’s issuance of “non-binding” guidance.
3. Chevron supports ideas such as incorporating restoration concepts in the Type B rule and changes to the selection criteria for restoration projects (i.e., adoption of some of NOAA’s restoration selection criteria).
4. Chevron has some concerns regarding Sub-question No.8. First, although some companies may be getting more comfortable with integrating NRDA and remedial activities (e.g. RI/FS), Chevron believes that the decision to integrate the two processes should be left to the discretion of the responsible party (RP). Second, although Chevron agrees that integration of the two processes has benefits, Chevron is concerned that a requirement of strict integration of NRDA and the RI/FS would not result in “expedited” settlement but, rather, may have the opposite effect. Chevron supports the idea that NRDA and RI/RS activities be “coordinated” and that NRDA not be coupled with RI/FS activities to the end of the ROD. Furthermore, to really promote “expedited” settlements, Chevron suggests that the Department of Justice clarify its policy of whether NRDA claims can be settled prior to completion of the ROD.

Sub-Committee 3

1. Chevron supports the conclusion stated on page 18 of Sub-committee’s 3 draft report.

Sub-Committee 4

1. Chevron generally supports the recommendations of Sub-committee 4.
2. As regards Recommendation 1, Chevron believes that option A would be the easiest approach.
3. Chevron strongly supports Recommendation 2. Chevron believes that the use of regional restoration plans would do much to improve the efficiency of the NRDA process.
4. Chevron generally agrees with recommendation 3, but urges the DOI to clarify that projects secured under the proposal would be available to responsible parties to settle NRD actions, if they choose.
5. Recommendation 4 needs to be clarified to concisely explain its intent, options, and pros & cons.

Mr. Bruce Douglas

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Again, Chevron thanks the DOI and members of the FACA committee for its hard and thoughtful work. Chevron looks forward to working with the DOI on follow-up activities to the FACA.

Respectfully,

Mike Ammann

cc: Ken Frank
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